



Application No. 10/765,544

9-2-11

DAC/FW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of)
Per George Chester Cox, Pro-se) RENEWED PETITION TO
Application No. 10/765,544) WITHDRAW THE HOLDING
Filed: January 27, 2004) OF ABANDONMENT UNDER
Title: SYSTEM AND METHOD OF) 37 C.F.R. 1.181
CUSTOMER VIDEO AUTHENTICATION)
TO PREVENT IDENTITY THEFT)

This Petition is respectfully submitted to withdraw a holding of abandonment of the above identified application.

On July 15, 2011, Applicant mailed a petition to withdraw a holding of abandonment.

On August 11, 2011, the Petitions Examiner dismissed such Petition to withdraw the holding of abandonment on the sole grounds that resetting the period for response would have required a response due by April 7, 2009. Also noted was that petitioner's July 8, 2009 response was beyond the statutory six month period. Therefore even had the period been reset commencing January 7, 2009 as indicated on the date stamp of the remailed envelope, petitioner's response still would have been considered untimely and no extension was requested.

Applicant's petition is intended to point out the improper abandonment by the USPTO after the USPTO remailing and not due to the failure to act by the applicant. The exhibits are not in dispute. Sufficiency of reply has never been reached. The principle of *res judicata* governs the sole disagreement of the controlling date of the reset period as well as the appropriate forum to advance the application.

**POINT ONE: WHAT FORUM SHOULD THE PETITION BE ADVANCED
IN FOR RESOLUTION?**

MPEP 710.06 reads in pertinent part:

"In the event that correspondence from the Office is received late ... (B) because the mail was delayed in leaving the USPTO (the postmark date is later than the mail date printed on the correspondence), applicants may petition to reset the period for reply, which petition shall be evaluated according to the guidelines which follow. Where the Office action involved in the petition was mailed by a Technology Center (TC), the authority to decide such petitions has been delegated to the TC Director. See Notice entitled "Petition to reset a period for response due to late receipt of a PTO action," 1160 O.G. 14 (March 1, 1994). "

Here, the date stamp of January 7, 2009 is later than the mail date of October 30, 2008. Therefore the TC Director may be delegated to advance the petition, presupposing that a TC re-mailed the defective October 30, 2008 Office Action. It is well established that the safety valve of 37 CFR 1.137 (a) or (b) is a much more rigorous, expensive, and severe hurdle to overcome.

POINT TWO:

**WAS THE RESPONSE MAILED WITHIN THE
SIX MONTH STATUTORY PERIOD IF THE TIME HAD BEEN RESET?**

37 C.F.R. § 1.8(1)(i)(A) Certificate of mailing or transmission states in pertinent part:

“...correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as **BEING TIMELY FILED** if the procedure described in this section is followed.

(1) Correspondence will be considered as being timely filed if:

- (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
 - (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;...”

In the case at bar, a bona fide response was timely deposited in the safe harbor of the USPS on July 5, 2009 with sufficient postage as evidenced by the Certificate of mail receipt No. 7007 0710 0001 0283 5250. (See original petition Exhibit 3 on page 5). Thus, Sunday, July 5, 2009 is two days *before* the midnight reset statutory six month expiration period of Tuesday, July 7, 2009 and as such should be considered as being timely filed consistent with 37 CFR 1.8(1)(i)(A). Apparently it was e-docketed on July 8, 2009.

POINT THREE:

**DID THE IMPROPER HOLDING OF ABANDONMENT
PRECLUDE MPEP 714.05 PROTECTIONS?**

Also included on July 5, 2009, was an executed declaration and petition for extension of time. This is reinforced on the transmittal form check-box for treatment as a concurrent pro-se written request for an extension of time. Applicant is in accord with the Petition Examiner's assessment in that Office records do not show formal actions in totality regarding his application.

However, sufficiency of reply, and specifically the request for extension, was never reached because of the premature and improper holding of abandonment. As such petitioner was prejudiced from the full protections spelled out in MPEP 714.05. In fact, Deputy Commissioner for Patents, Peggy Focarino issued a Memorandum on this procedure as a sense of duty to exploit technology e.g. telephone calls, facsimile, proper signature, supplemental actions, and even examiner-initiated interviews, that may have led to, screening for tolling, card payment forms, electronic payments, authorization to correct any deficiencies all to avoid abandonment and pendency rates. (*Attached hereto as exhibit R-1*).

MPEP 714.05 States:

Examiner Should Immediately Inspect

"Actions by applicant, especially those filed near the end of the period for reply, should be inspected immediately upon filing to determine whether they are completely responsive to the preceding Office action so as to prevent abandonment of the application. If found inadequate, and sufficient time remains, applicant should be notified of the deficiencies and warned to complete the reply within the period.

All amended applications forwarded to the examiner should be inspected at once to determine the following:

- (A) If the amendment is properly signed.
- (B) If the amendment has been filed within the statutory period, set shortened period, or time limit. **[Safety valve for Tolling]**
- (C) If the amendment is fully responsive and complies with 37 CFR 1.121.
- (D) If the changes made by the amendment warrant transfer.
- (E) If the application is special.
- (F) If claims suggested to applicant for interference purposes have been copied.
- (G) If there is a traversal of a requirement for restriction.
- (H) If "easily erasable" paper or other nonpermanent method of preparation or reproduction has been used.
- (I) If applicant has cited references.
- (J) If a terminal disclaimer has been filed.
- (K) If any matter involving security has been added (MPEP § 115).

ACTION CROSSES AMENDMENT

A supplemental action **>may be< necessary when an amendment is filed on or before the mailing date of the regular action but reaches the Technology Center later. The supplemental action should be promptly prepared. It need not reiterate all portions of the previous action that are still applicable but it should specify which portions are to be disregarded, pointing out that **the period for reply runs from the mailing of the supplemental action.** The action should be headed "Responsive to amendment of (date) and supplemental to the action mailed (date)."

In the case at bar, the petitioner was deprived of all the privileges and full protections grounded in MPEP 714.05 to identify any deficiencies for cure that may have averted any exigent disasters that have been echoed and directed by Deputy Commissioner for Patents, Peggy Focarino - Quoting:

"Often times, the deficiency in the amendment can be remedied by placing a quick phone call to the attorney or applicant to gain authorization to make any minor changes needed to correct the deficiency." *(See exhibit R-1)*

These high tech tools for authorization or to cure any other procedural or minor defects to avoid abandonment could have been implemented with sufficient time remaining. It is noteworthy that the petitions examiner dismissed the original petition for what was diagnosed as a one day discrepancy. Contrasting that upon renewal, the primary examiner in a TC would have had two full days to telephone, facsimile, or issue a supplemental action effectively resetting the rely date. Alternatively a text message or e-mail could have been dispatched to applicant. However, the improper holding of abandonment precluded this early inspection safety valve and as such petitioner has been prejudiced.

Should a review become necessary, these acts may rise to the level of a capricious abuse of discretion due to arbitrary enforcement. On its face, this performance may appear to test the limits of the Constitutional requisites grounded in the Fifth and Fourteenth Amendment's protective covenants of "equal protection". *Bolling v. Sharpe*, 347 U.S. 497 (1954).

In summary, applicant's July 5, 2009 response to the final Office action was submitted within the six month statutory period. This pro-se applicant acted in good faith in his request for extension of time as affirmed on the transmittal form. Additionally, the improper holding of abandonment exclusively due to the oversight by the USPTO has precluded the examiner in a TC from exercising his/her duty of broad discretion for even a cursory inspection pursuant to MPEP 715.05 which may have averted abandonment. The application is stalled and the procedures of MPEP 710.06 may be applied for a change of forum.

Other cures not limited to a telephone call may have included an advisory action or withdrawal of final office action or issue of a supplemental action, or any other countless number of compact prosecution tools routinely applied to advance the application that could have been imposed to avert abandonment. These and other cures are fully available to ALL other applicants found at this similar stage to rescue their application from abandonment and to move towards allowability.

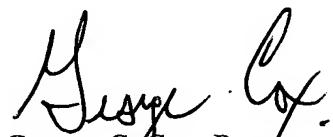
RELIEF SOUGHT

Petitioner respectfully requests that the broadest liberal interpretation of the statutes, rules, and procedures be applied on his behalf. Administrative determinations are entitled to great weight and respect. Thus, for the above reasons, it is also respectfully requested that the matter be forwarded along with any recommendations to a TC that the holding of abandonment be withdrawn. The petitioner invites *sua sponte* action in this "rare" situation which may be accommodated by the PTO to expedite the prosecution of his stalled application.

Entry is not a right, thus time would be welcome to engage a practitioner to perfect his claims, having now come to a rest at a new cross-road in his journey. Petitioner's destination in this

journey has always been for commercialization in the area of security for The Department of Homeland Security plus the financial industry. It has been anticipated that there will be a ripple effect of job creation desperately needed for our Nation and the middle class. Thank you in advance for your flexible understanding and progressive intentions. I remain with deep admiration for Federal employees, whom are often overworked with tremendous deadlines,

Thankfully,



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I hereby certify that this correspondence is being deposited on September 6, 2011 with the U.S. Postal Service as
~~Express~~ ~~First Class~~ Mail in an envelope addressed to: Office of Petitions, Mail Stop: Petition Commissioner for Patents, P.O. Box 1450, Alexandria, Va. 22313 - 1450

EG 674 366 107 US



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UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS

MEMORANDUM

Date: February 4, 2010

To: Patent Examiner Corps

Peggy Focarino

From: Peggy Focarino
Deputy Commissioner for Patents

SUBJECT: Non-Compliant Amendment

Dear Colleagues,

As we continue to focus our efforts on decreasing the pendency of patent applications, I would like to bring to your attention one particular type of action that we sometimes take which can add months to application pendency – the mailing of a Notice of Non-Compliant Amendment. Often times, the deficiency in the amendment can be remedied by placing a quick phone call to the attorney or applicant to gain authorization to make any minor changes needed to correct the deficiency. As a reminder, please refer to MPEP 714.05,

http://www.uspto.gov/web/offices/pac/mpep/documents/0700_714_05.htm , which sets forth the list of deficiencies and the desired practice of early inspection by the examiner of incoming amendments. Early inspection enables you to pick up on minor errors early on and help applicants correct them so that they don't hold up the substantive examination process.

I have the utmost confidence and trust that you will use your professional judgment to distinguish minor errors from substantive ones and deal with them accordingly as we continue to refine and improve our internal processing in an effort to reduce pendency.

With our Count System Initiatives in place, I want to encourage you to avail yourselves of the time now allowed for an Examiner-Initiated Interview to resolve any minor issues identified at initial inspection. Early resolution of these issues will result in decreased pendency of applications having minor deficiencies and will contribute to lowering overall pendency.

Thank you for your suggestions, and for your continued efforts to support our strategic goals.

Exhibit R-1
Submitted 9/1/11